IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.875 OF 1999

IN

WRIT PETITION NO.1375 OF 1999

1.Smt.Principal, Smt.B.M.Ruia
Mahila Mahavidyalaya and another. ...Appellants.

vs.

1.Mrs.Malati Udeshi & others. ...Respondents.

Mr.N.M. Ganguli, for Appellants.

Mr.M.P.Vashi i/b. M/s.M.P.Vashi & Co., for Respondent no.1.

AND

WRIT PETITION NO.596 OF 2001

Malti Udeshi. ...Petitioner.

vs.

1.The Principal, Smt.B.M.Ruia
Mahila Mahavidyalay & ors. ...Respondents.

Mr.M.P.Vashi i/b. M/s.M.P.Vashi & Associates, for

Petitioner.

Mr.N.M.Ganguli, for Respondent no.1.

Mr.P.G.sawant, AGP for Respondent no.2.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 30th July,2007.

P.C.:-

1. The appeal and the Writ petition are between the same parties and the subject matter of the appeal and the writ petition is also the same and therefore, the appeal and the writ petition can be conveniently disposed of by a common order.

2. Heard the learned Counsel appearing for both the sides. The petitioner in writ petition no.596 of 2001 is the employee and the appellant in Appeal no.875 of 1999 is the employer. For the sake of convenience, in this judgment they will be referred to as the employee and the

employer. At the relevant time the employee was working as office superintendent in the college of the employer. Charges were framed by the employer against the employee. A departmental inquiry was held. In the departmental inquiry, the charges were held to have been proved and the employer imposed punishment of removal from service on the employee. Against that order the employee filed an appeal before the College Tribunal constituted under the Maharashtra Universities Act,1994. That appeal was registered as Appeal no.29 of 1996. The appeal was decided by the College Tribunal by order dated 27.1.1999. The College Tribunal held that out of the charges that were levelled against the employee, only two charges have been proved viz. Charges 3 and 4. Charge no.3 was making false or exaggerated allegations against any officer, superior, co-employee or authority, and the charge no.4 was of refusal to accept chargesheet, order or other communications served according to the rules. The College Tribunal held that for the misconduct proved against the employee,

punishment of removal from service is disproportionate and the punishment of stoppage of increment would be proper penalty. Accordingly, the appeal was allowed, the order imposing penalty of removal from service was set aside. The employer was directed to reinstate the employee in service and was also directed to pay only 50% backwages. The penalty of stoppage of two increments was imposed. Feeling aggrieved by that order the employer filed a Writ Petition bearing no.1375 of 1999 before a learned Single Judge of this Court. That petition was disposed of by order dated 5.7.1999. The learned Single Judge held that the Tribunal was justified in holding that charge no.4 is proved against the employee. The learned Single Judge has observed that after going through the evidence of Mr.Desai he found that the evidence does not inspire confidence. However, the learned Single Judge has observed that as the College Tribunal has accepted the evidence of Mr.Desai, he proceeded on the assumption that charge no.3 has also been proved against the employee. The learned Single

Judge has held that the Tribunal was justified in holding that the punishment of removal from service is unduly harsh, and the learned Single Judge, therefore, declined to interfere with the order of the College Tribunal. Against that order of the learned Single Judge, the present appeal has been filed. It appears that immediately after the order was passed by the tribunal the employee did not file any petition challenging the order of the College Tribunal. Writ petition no.596 of 2001 was filed by the employee only after the writ petition filed by the employer was decided by the learned Single Judge. That writ petition has been directed to be heard alongwith this appeal. Therefore, we have heard the learned Counsel appearing for employer and the employee in the appeal as also in the writ petition.

3. So far as the appeal is concerned, it is submitted on behalf of the employer that the learned Single Judge was not justified in declining to interfere with the order of the

Tribunal setting aside the punishment of removal from service. According to the learned Counsel, charge no.3 was serious enough to deny reinstatement of the employee in the service. The learned Counsel appearing for employee, on the other hand, submits that the learned Single Judge was justified in declining to interfere with the order of the Tribunal. The learned Counsel submits that the only serious charge which was held to have been proved by the Tribunal against the employee was charge no.3. The learned Single Judge after going through the evidence on record found that the material evidence in that regard does not inspire confidence, and therefore, the learned Single Judge was justified in declining to interfere with the order of the College Tribunal at the instance of the employer. The learned Counsel further submits that now even assuming that considering the nature of charge no.3, the order granting reinstatement to the employee had an element of encouraging indiscipline, the order of the College Tribunal has never been

implemented till today. With the result, the employee reached the age of superannuation. Now there is no question of reinstatement. Now the question is only of paying wages to the employee which she would have been entitled to.

4. In so far as the writ petition filed by the employee is concerned, it is submitted on behalf of the employee that withholding of backwages is not one of the punishments laid down by the Standing Code. Therefore, the punishment of withholding of backwages could not have been ordered by the College Tribunal as punishment. It is further submitted that even assuming that under Section 61 of the Maharashtra Universities Act the College Tribunal could have ordered withholding of part of the backwages but the College Tribunal was under a duty to give reasons for its order directing withholding of 50% backwages of the employee after holding that the employee is entitled to an order of reinstatement in service. It is submitted, relying on the judgment of the learned Single Judge of this

Court in the case of “Lalchand Govindrao Dhoke Vs. Industrial Court & ors., 2006(2) Bombay Cases Reporter 886”, that the order of withholding of backwages can only be made in such a situation, on finding that the employee was gainfully employed during the intervening period. As it is nobody's case that the employee was gainfully employed during the intervening period, the order for withholding backwages could not have been made. In any case, there are no reasons given by the Tribunal as to why he made the order of withholding of 50% backwages and therefore, the order is liable to be set aside.

5. On the other hand on behalf of the employer it is submitted that the burden to prove that employee was not gainfully employed was on the employee. The employee has not discharged that burden. It is further submitted that the College Tribunal was justified in withholding part of the backwages to the employee because the employee was to be paid without rendering any work and therefore, the College Tribunal was justified in withholding 50% backwages.

6. Now considering the appeal filed by the employer against the order of the learned Single Judge, perusal of that order shows that only charge nos.3 and 4 were held to have been proved by the College Tribunal. That charge nos. 3 and 4 have been proved is the finding recorded by the College Tribunal on the basis of the evidence on record. Then perusal of charge no.4 shows that it was not the charge calling for major penalty or substantial penalty. Charge no.3 was of serious nature. Perusal of the order of the learned Single Judge shows that the learned

Single Judge went through the evidence on record of the College Tribunal. It further shows that the finding of the College Tribunal that charge no.3 is proved, was principally based on the evidence of Mr.Desai. The order of the learned Single Judge shows that the learned Single Judge went through the evidence of Mr.Desai and formed an opinion that the evidence does not inspire confidence. However, still the learned Single Judge declined to interfere with the finding recorded by the College Tribunal on charge no.3 mainly because it is a finding of fact recorded by the College Tribunal. That except charge no.3 and 4, no charge is proved against the employee is a finding of fact recorded by the College Tribunal and is confirmed by the learned Single Judge. In our opinion, it will not be appropriate for this Court to interfere with the finding of fact recorded by the College Tribunal and which is confirmed by the learned Single Judge, in our jurisdiction under the Letters Patent. It was also not urged before us that the finding that no charge other than charge nos. 3

and 4 are proved, should be reversed. The only submission made was that the College Tribunal was not justified in interfering with the punishment imposed by the management.

7. So far as the aspect of the punishment is concerned, surely for charge no.3 the punishment of removal from service cannot be imposed. Perusal of the provisions of Section 61 of the Maharashtra Universities Act which has been quoted above shows that a specific power is vested in the College Tribunal to interfere with the punishment imposed, and therefore, the order of the College Tribunal reducing the penalty cannot be termed as an order which was beyond the jurisdiction of the College Tribunal. The power of this Court to interfere with the order of the Tribunal which is within the jurisdiction of the Tribunal is extremely limited and therefore, in our opinion, the learned Single Judge was justified in declining to interfere with the order of the College Tribunal directing reinstatement of the employee in service. So far

as that aspect of the matter is concerned, in our opinion, it was one of the relevant considerations whether after holding that the charge no.3 is proved, directing the reinstatement of the employee will result in encouraging indiscipline. However, that aspect of the matter has lost significance because the employee has reached the age of superannuation, therefore, it is now only question of payment of wages to the employee. In our opinion, considering that the employee had rendered services for about 26 years before she was removed from the service, it will not be appropriate at this stage to interfere with the order of the College Tribunal directing reinstatement of the employee in service. Taking overall view of the matter therefore, in our opinion, the appeal is liable to be dismissed.

8. Now taking up the Writ Petition filed by the employee for consideration, the power of the College Tribunal is contained in Section 61 of the Maharashtra Universities Act. It is sub-

sections (1) and (2) of Section 61 are relevant, they read as under:-

> “61. (1) On receipt of an appeal, where the Tribunal after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in sub-section (1) of Section 59 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the university or management, it may dismiss the appeal.
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> (2) Where the Tribunal, after giving reasonable opportunity to both the parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law, contract, or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the university or the management, as the case may be, partially or wholly, and direct the university or, as the case may be, the management-
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> (a) to reinstate the employee on

the same post or on a lower post as it may specify;

(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;

(c) to give arrears of emoluments to the employee for such period as it may specify;

(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service of reduction in rank, as the case may be;

(e) where it is decided not to reinstate the employee or in any other appropriate case, to give such sum to the employee, not exceeding his emoluments for six months, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case."

Perusal of the above quoted provision shows that

power is vested in the College Tribunal by the Act to give arrears of emoluments to the employee for such period as it may specify. Thus, power is vested in the College Tribunal to issue directions for payment of arrears of emoluments to an employee for a period to be specified in the order of the Tribunal. The College Tribunal constituted under the Universities Act apart from being a statutory tribunal, obviously is a quasi judicial tribunal. Therefore, the power vested in the College Tribunal will have to be exercised by that Tribunal in consonance with the principles of natural justice. One of the cardinal principles of the natural justice is that a quasi judicial authority has to give cogent reasons for the order that it makes, specially an order which adversely affects the interest of a person. Therefore, though the College Tribunal cannot be denied the power to direct withholding of part of the emolument of an employee, if it is directing reinstatement in service, in order to comply with the principles of natural justice it will have to assign reasons

for withholding a part of emolument to which the employee would be otherwise entitled. If one peruses the order of the College Tribunal from that point of view, it becomes clear that so far as that aspect of the matter is concerned, it is paragraph 34 of the order of the College Tribunal which is relevant. It reads as under:-

> " I have given my anxious consideration to the penalty aspect. I have stated earlier, I find her guilty of two charges out of the four. One of the charges held proved is of refusal to accept the communications. Though it is on misconduct it should not surely deserve penalty of removal from services. The other charges held proved is of making false or exaggerated allegations against superiors. This to my mind is a serious charge. However, considering the past record and the long tenure of service I find that reinstatement should not be refused. However, stoppage of increments and in my opinion two increments would be a proper penalty to impose. Hence, the following order.
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> O R D E R
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> Appeal is partly allowed and

> the penalty of removal from services is set aside the Appellant is reinstated in service with 50% backwages. She is visited with a penalty of stoppage of two increments. No order as to costs. Order to be carried out within a week after the expiry of period of two months from the date of service of this order."

Perusal of the above paragraph shows that the College Tribunal has held that the proved misconduct does not deserve penalty of removal from service. It has also held that the employee is entitled to reinstatement in service, and then it held that for proved misconduct the adequate penalty would be the penalty of withholding increments. The operative part of the order shows that accordingly reinstatement in the service is ordered. On reinstatement penalty of stoppage of two increments stands imposed on the employee but the College Tribunal also directed that on reinstatement the employee would not be entitled to 100% backwages, but only to 50% backwages. One does not find any reason given by the College Tribunal for directing withholding of

50% backwages. Perusal of Rule 43 of the The Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and conditions of Service of Non-Teaching employees) Rules,1984, specially sub-rule (1) shows that withholding of any part of the backwages is not one of the punishments to be imposed on the non-teaching employee working in the Maharashtra Non-agricultural Universities and the colleges affiliated to University. Sub-rule (1) of Rule 43 of the Standard Code reads as under:-

> “43. Penalties:- (1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on the University or the College employee found guilty of misconduct:-
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> (a) Minor Penalties-
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> (i)censure,
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> (ii) fine,

(iii)withholding of increment of pay,

(iv) withholding of promotion,

(v) recovery from his pay, or such other amounts as may be due to him, of the whole or part of any pecuniary loss caused by him to the University or the College, by negligence or by breach of orders.

(b) Major penalties-

(i)Reduction to a lower stage in the time-scale of pay, for a specified period with further direction as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period,

the reduction shall or shall not have the effect of postponing the future increments of his pay,

(ii) reduction to a lower time-scale of pay, grade, post or services which shall, ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding condition of restoration to the time-scale of pay, grade, post or service from which he was reduced, and his seniority and pay on such restoration,

(iii) compulsory retirement,

(iv) removal from service, which shall not be a disqualification for future employment under the University or the College,

(v) dismissal from service, which shall be a disqualification for future employment under the University or the College.”

Explanation:- The following shall not amount to penalty within the meaning of this rule, namely:-

(i)withholding of increment of pay of the employee for his failure to pass any departmental examination, in accordance with the rules or orders, or the terms of his appointment probation;

(ii) stoppage of an employee, at the efficiency bar, in the time-scale

of pay, on the ground of unfitness to cross the bar by the employee;

(iii) non-promotion of the employee, whether in substantiate or in officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible, on administrative ground not connected with his conduct;

(iv) reversion of the employee officiating in higher service, grade or post to a lower grade or post on the ground that he is considered to be unsuitable for such higher service, grade or post, or on any administrative ground not connected with his conduct;

(v) reversion of the employee, appointed on probation to any other service, grade or post; to his permanent service, grade or

post held by him under the University or the same college, management, during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing such probation,

(vi) repatriation of the service of the employee whose services have been borrowed from outside authority or recalling the employee from the foreign employment to such authority;

(vii) compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services (i) of the employee appointed on probation, during or at the end of his probation, in accordance with the terms of his appointment or rules or orders governing such

> probation; or (ii) of a temporary employee on grounds unconnected with his conduct or (iii) of the employee under an agreement, in accordance with the terms of such agreement.

In view of the above quoted provisions therefore, an order of withholding of a part of the backwages is not an order imposing penalty. Though an order withholding a part of the backwages is not an order imposing punishment, nevertheless that order adversely affects the employee concerned. Perusal of the order of the College Tribunal shows it contains discussions of the misconduct alleged against the employee and whether that misconduct has been proved, to what extent it has been proved and what would be proper punishment to be imposed for the proved misconduct. No reasons whatsoever have been given for withholding a part of the backwages. Obviously therefore that part of the order of the College Tribunal is liable to be set aside. In

order to find out whether the College Tribunal failed to disclose reasons for its order withholding part of backwages though they exist on record or the Tribunal did not disclose the reasons because none are to be found on record. We have gone through the record. We find that the College Tribunal has found it as a fact that the employee has rendered 26 years of service in the institution before the inquiry was started. She started her career at lower level on administrative side of the institution and rose to the highest position on the administrative side. In the past no allegations of any misconduct were made against her. Thus, there is nothing in her previous record to justify withholding of any part of backwages. It is also nobody's case that during the period of the departmental enquiry and thereafter, she was gainfully employed anywhere. Thus, we find that the record does not disclose any reason for which a part of her backwages could be withheld. It may be pointed out here that the learned Counsel appearing for employee has stated before us that

the employee accepts the penalty imposed by the College Tribunal of withholding of increments. In our opinion therefore, it would not be in the interest of justice to withhold any part of her backwages. It may be pointed out here that the employee has already reached the age of superannuation, therefore, she is not to be reinstated in service.

9. In the result therefore, we make the following order:-

The appeal filed by the employer is dismissed.

The Writ petition filed by the employee succeeds. Only that part of the order of the College Tribunal which directs withholding of 50% backwages is set aside. The employer is directed to reinstate the employee in the services with full backwages. Now as a result of the employee attaining the age of superannuation, it is only the question of calculating the amount of backwages and making payment to the employee.

The employer to make payment of backwages as also the retiral benefits to the employee within a period of Sixteen weeks from today.

The learned Counsel appearing for employee states that within a period of four weeks from today the employee shall calculate the amount of backwages and the retiral benefits to which she is entitled and shall communicate to the employer and the Advocate appearing for employer. The statement is accepted.

No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)